

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAWNSAE N. CREER,

Defendant and Appellant.

F057887

(Super. Ct. No. MCR031865)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Edward P. Moffat, Judge.

Alan Mason, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and George M. Hendrickson, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

* Before Vartabedian, Acting P.J., Kane, J. and Poochigian, J.

Defendant Shawnsae N. Creer was convicted of possession of a weapon, a slungshot, while incarcerated in a penal institution, in violation of Penal Code section 4502, subdivision (a). The jury was instructed that a slungshot is “a weapon consisting of a small mass of metal or stone fixed to a flexible handle or strap.” She appeals, claiming she received ineffective assistance of counsel when her counsel failed to request a pinpoint instruction defining the word “fixed.”

Facts

Defendant is an inmate in prison. Correctional Sergeant John Alvara came in contact with defendant while she was on a walkway. He asked her if she had a ducket (an inmate pass that allows the inmate to go to an event or area of the prison). She said she did not have a ducket. Alvarez told defendant to go back to her housing unit. Defendant refused to go. Alvarez then asked defendant if she was refusing an order, and defendant said she was. At this point defendant was told to turn around; she turned around and was handcuffed.

Alvarez placed defendant in a holding cell. While in the holding cell, defendant told Alvarez she had a weapon and she was going to hit someone with it. He asked her to give him the weapon. From her pocket she pulled out a combination lock attached to a “stinger.” A stinger is an electrical cord with a heating element on the end. Stingers can be purchased by inmates and used to heat beverages.

When asked if she had concerns about enemies, defendant replied that she owed debts to others for heroin and tobacco and she feared for her safety. She also said she did not want to go back to her housing unit and needed a break.

Correctional Officer James Wilkerson was assigned to the investigative services unit in the prison. He processes all the evidence from the evidence lockers in the institution. He retrieved the item taken from defendant, photographed it and inspected it. He brought the item into court. Wilkerson described the item as a state padlock attached to the end of a stinger cord.

Wilkerson had received training regarding inmate-manufactured weapons. He identified the item seized from defendant as a slungshot type of weapon. Although the item consisted of two normal everyday objects that are not weapons by themselves, when put together they became a weapon. He explained that the cord could be wrapped around the hand and then the cord could be swung around with the lock on the end, or it could be used in a yo-yo motion. If the two items were separated, they would not be weapons.

Defendant testified on her own behalf. Her account of what happened was very similar to the account given by Alvarez. She explained that she did not have any intention to hurt anyone, but she had the item on her so she would be sent to administrative segregation. She wanted to go to administrative segregation because she needed a break. Defendant claimed that the lock was attached to the stinger but was not locked, so if she had tried to use the item the lock would have come off. She said she lied to the officer when she told him she owed money to other inmates and lied when she told the officer she was going to hit somebody with the weapon. Defendant's prior murder conviction was admitted to impeach her credibility.

Discussion

As previously set forth, the jury was instructed that a slungshot is "a weapon consisting of a small mass of metal or stone fixed to a flexible handle or strap."

Defendant contends she was denied the effective assistance of counsel when her counsel did not request a pinpoint instruction defining the word "fixed" as used in the definition of a slungshot. As claimed by defendant, "fixed" should have been defined as being "securely placed or fastened." It is argued that if the lock was not closed around the stinger, as testified to by defendant, then the lock was not "fixed," i.e. securely placed, to the stinger and defendant was not guilty.

The definition used in the instruction given by the court is derived from *People v. Williams* (1929) 100 Cal.App. 149, where the court adopted the following dictionary

definition for a slungshot: “a small mass of metal or stone fixed on a flexible handle, strap or the like, used as a weapon.” (*Id.* at p. 151.)

In *People v. Fannin* (2001) 91 Cal.App.4th 1399, 1406, the defendant possessed a bicycle lock, which consisted of a lock attached to a chain. In describing a slungshot, the court said, “a slungshot is a striking weapon consisting of a heavy weight attached to a flexible handle.” (*Ibid.*)

Penal Code section 4502, subdivision (a) “is intended to protect inmates and correctional staff ‘from the peril of assaults with dangerous weapons perpetrated by armed prisoners.’ [Citation.] It applies to instruments that can be used to inflict injury and that are not necessary for an inmate to have in the inmate’s possession.” (*People v. Custodio* (1999) 73 Cal.App.4th 807, 812.)

Penal Code section 4502 prohibits the possession of a slungshot, but does not define a slungshot. Although the instruction as given was drawn from *People v. Williams, supra*, 100 Cal.App. 149, this definition is not immutable. As stated in *People v. Fannin, supra*, 91 Cal.App.4th at page 1406, the heavy object must be attached to a flexible handle to qualify as a slungshot. Both definitions comport with the purpose of Penal Code section 4502, subdivision (a), prohibiting the possession by a prison inmate of weapons that can be used to inflict injury. In addition, we note that inmates manufacturing weapons in prison are often forced to fashion their weapons in a crude manner; to require that the weapons they make meet higher standards of design (such as “firmly attached”) before they qualify as a listed weapon would be at odds with the methods available to prisoners to make weapons and would run counter to the purpose of the statute.

Had counsel for defendant requested a pinpoint instruction stating that the heavy object must be securely attached or placed so as to be firm and not readily moveable, the court could have properly rejected such an instruction because the definition was too narrow and, in fact, the court might have watered down the instruction as given to include

a definition that required the object to be “attached” rather than “fixed.” Under such circumstances we do not find that defendant received ineffective assistance of counsel when her counsel failed to request a pinpoint instruction defining the term “fixed.”

Disposition

The judgment is affirmed.